

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
GULF OIL CORP.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
~~Revision of a Determination~~ a Refund
of Corporation
Taxes under Article ~~(8)~~ 9 of the
Tax Law for the Year ~~(8)~~ 1968.:

State of New York
County of Albany

Marsina Donnini, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 29th day of July, 1977, she served the within
Notice of Decision by (certified) mail upon Gulf Oil Corp.

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:
Gulf Oil Corp.
P.O. Box 2100
Houston, Texas 77001

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative~~
~~of the~~) petitioner herein and that the address set forth on said wrapper is the
last known address of the (~~representative of the~~) petitioner.

Sworn to before me this

29th day of July, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GULF OIL CORP.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
~~or a Refund of a Deficiency or a Refund~~
of Corporation
Taxes under Article(s) 9 of the
Tax Law for the Year(s) ~~Period(s)~~ 1968. :

State of New York
County of Albany

Marsina Donnini, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 29th day of July, 19 77, she served the within
Notice of Decision by (certified) mail upon Arthur L. Vangeli

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Arthur L. Vangeli, Esq.
P.O. Box 8056
Philadelphia, Pennsylvania 19101

and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative
of the) petitioner herein and that the address set forth on said wrapper is the
last known address of the (representative of the) petitioner.

Sworn to before me this

29th day of July, 1977.

Marsina Donnini

Janet Mack



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

July 29, 1977

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

Gulf Oil Corp.
P.O. Box 2100
Houston, Texas 77001

Gentlemen:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section ~~(8)~~ **1090** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

Paul B. Coburn
Supervising Tax
Hearing Officer

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
GULF OIL CORP.	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Corporation Tax Due under	:	
Article 9 of the Tax Law for the Year	:	
1968.	:	

Petitioner, Gulf Oil Corp., P.O. Box 2100, Houston, Texas 77001 (hereinafter Gulf), filed a petition for redetermination of a deficiency or for refund of corporation tax under Article 9 of the Tax Law for the year 1968. (File No. 11226)

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on August 31, 1976 at 10:00 a.m. Petitioner appeared by Arthur L. Vangeli, Esq. The Corporation Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq. of counsel).

ISSUES

I. Whether petitioner's change from par value stock to no-par value stock with a stated value, constitutes a change of capital

structure within the intent and meaning of section 181, Article 9 of the Tax Law, and requires recomputation of the license fee of petitioner, Gulf.

II. Whether, if there is deemed to be a change of capital structure, the recomputation of tax should be limited to the number of issued no-par value shares allocated to New York, over and above the number of such shares represented by the fees previously paid on the value of its issued par value shares allocated to New York.

III. Whether the difference in rates applied to par and no-par shares is constitutionally unfair and unreasonable.

FINDINGS OF FACT

1. The petitioner, Gulf, timely filed reports of license fees on foreign corporations, under Article 9 of the Tax Law, from February 1, 1936 to December 31, 1968.

2. On February 16, 1970, the Corporation Tax Bureau issued a Statement of Audit Adjustment explaining to the petitioner, Gulf, how the additional tax due had been computed, and that the tax due was \$329,588.38, plus interest of \$18,127.36, for a total due of \$347,715.74.

3. On July 15, 1971, the Corporation Tax Bureau issued a Notice of Deficiency against the petitioner, Gulf, showing

additional license fee due of \$329,588.38, plus interest in the amount of \$46,142.37, for a total of \$375,730.75.

4. On September 23, 1971, the petitioner, Gulf, timely filed a petition for redetermination of the deficiency.

5. Petitioner, Gulf, is a publicly held, multi-national Pennsylvania corporation, and has been qualified since February 1, 1936 to do business in the State of New York. For tax purposes under Article 9-A of the Tax Law, its tax year ended December 31, 1968.

6. On September 18, 1968, at a special meeting of the stockholders of petitioner, Gulf, a resolution was adopted to amend the Articles of Incorporation to authorize the issuance of 300,000,000 shares of capital stocks without par value, but with a stated value of \$4.16 $\frac{2}{3}$ per share.

7. Immediately prior to September 18, 1968, petitioner's authorized capital stocks consisted of 150 million shares with a par value of \$8.33 $\frac{1}{3}$ per share, amounting to capital of \$1,250,000,000.00.

8. After September 18, 1968 and prior to December 31, 1968, petitioner, Gulf, issued to its shareholders certificates for one additional share of capital stock without par value (and with stated capital applicable thereto in the amount of \$4.16 $\frac{2}{3}$),

for each one share of capital stock of par value of \$8.33 1/3 held by them on September 18, 1968. Shareholders did not surrender certificates that they held for shares of capital stocks of par value of \$8.33 1/3 per share, but as of September 18, 1968, each such certificate represented the same number of shares of no par stock with a stated capital of \$4.16 2/3 per share as redesignated in the stock split resolution.

9. On December 31, 1968, the petitioner's total issued and outstanding capital stock consisted of 211,770,696 shares with no par value, but with a stated value of \$4.16 2/3 per share, amounting to \$882,337,900.00.

10. On September 11, 1969, petitioner, Gulf, filed a Report of License Fee on Foreign Corporations for the period ending December 31, 1968, showing no tax due as a result of the change of each share of petitioner's capital stock with a par value of \$8.33 1/3 per share, into two shares without par value but with a stated value of \$4.16 2/3 per share, as authorized by the amendment of the Articles of Incorporation.

11. On November 11, 1971, the Corporation Tax Bureau issued a Notice of Claim against petitioner, Gulf, for an additional license fee under section 181 of the Tax Law for the year ending

December 31, 1968, in the amount of \$20,241.05, for the reasons stated in said notice.

12. For the calendar year ending December 31, 1968, the taxpayer's business capital, investment capital and subsidiary capital allocable within the State of New York, pursuant to the provisions of Article 9-A of the Tax Law was as follows:

Business Capital	\$140,826,909.00
Investment Capital	7,711,166.00
Subsidiary Capital	<u>4,228,428.00</u>
Total Allocable to New York	\$152,766,503.00

13. For the calendar year ending December 31, 1968, the taxpayer's total capital was \$4,839,580,712.00.

14. For the calendar year ending December 31, 1968, the percentage of the taxpayer's total business, investment and subsidiary capital allocable to New York was 3.1566%.

15. As of December 31, 1968, the number of shares of the taxpayer's issued and outstanding capital stock without par value but with a stated value of \$4.16 $\frac{2}{3}$ per share allocable to New York was 6,684,754 shares.

16. The deficiency asserted against petitioner, Gulf, has not yet been paid.

CONCLUSIONS OF LAW

A. That the change from par value to no-par value stock was a change in the capital share structure within the meaning and

intent of section 181 of the Tax Law. That an increase in the number of shares without an increase in the dollar capital represented by the shares was a change in capital structure.

(Matter of American Chicle Co. v. State Tax Commission, 5 A.D.

2d 318, 172 N.Y.S. 2d 389, appeal denied 6 A.D. 2d 948, 176 N.Y.S. 2d 251.)

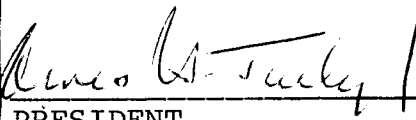
B. That the license fee for a foreign corporation recomputation upon a change in capital share structure must be made upon the total shares issued and allocated to New York after the change in structure is made. No provision is made in section 181 of the Tax Law for any deduction in computing the number of no par shares to which the statutory rate is to be applied. There appears to be no basis in the Tax Law to tax no-par value shares at the par value rate. Nor does there appear to be any authority to assume that the original issued shares have been taxed at the \$.06 per share no par rate. (Section 181 Tax Law, American Chicle v. State Tax Commission, (supra) 172 N.Y.S. 2d 389, 391.)

C. That passing upon the question of the constitutionality of the Tax Law is outside the authority of the State Tax Commission. The courts have held section 181 of the Tax Law to be constitutional.

D. That the petition of Gulf Oil Corp. for redetermination of deficiency under section 181 of the Tax Law for the period ended December 31, 1968 is in all respects denied. The amounts of the assessment are due together with interest under the Tax Law, until fully paid.

DATED: Albany, New York
July 29, 1977

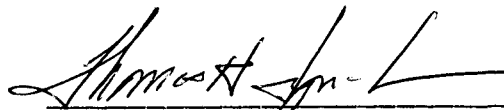
STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER